
(2013) 07 JH CK 0010

In the Jharkhand High Court

Case No : Writ Petition (S) No. 3371 of 2006

Anee Agnesh Murmu and Others

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 22-07-2013

Acts Referred:

Citation : (2013) 4 AJR 162 : (2013) 4 JLJR 355

Hon'ble Judges : Aparesh Kumar Singh, J

Bench : Single Bench

Advocate : Rajiv Ranjan and Krishna Murari, for the Appellant; Ram Niwas Roy, J. Rahman and Sanjay Kumar Pandey, for the Respondent

Final Decision : Allowed

Judgement

Aparesh Kumar Singh, J.

Herd learned counsel for the parties.

1. Counsel for the State has submitted that an affidavit was filed on 10th July, 2012 by the District Superintendent of Education, Dumka and the office was directed to trace the same and place it on record. As per office report, no such affidavit has been filed. Counsel for the State, however, submits that by the said affidavit only the resolution dated 15.11-1978 was brought on record along with the order of rejection of petitioner nos. 2 to 4. The said circular is, however, contained in compilation of the Bihar Rajya Prarambhik Shiksha, Vidhi Evam Vidhan. The rejection orders passed by the Director in respect of petitioner nos. 2 to 4 dated 22.6.2012 are already there "on record. Therefore, counsel for the respondent-State also submits that for adjudication of the instant writ application reliance upon such affidavit may not be necessary. The present writ application has been preferred by four writ petitioners with common grievances that the preposition statement sent through the office of the District Superintendent of Education for approval by the Directorate of Primary Education, Government of Jharkhand has been rejected by different impugned orders in respect of each of

them. The rejection order of the petitioner no. 1 is dated 19.7.2005, which is contained in Annexure-12 to the writ petition. The rejection order dated 22.6.2012 passed by the same Director of Primary Education, Government of Jharkhand as contained in memo nos. 1079, 1080 and 1081 have also subsequently been challenged by the writ petitioners in I.A. No. 925 of 2013, Which was allowed by order dated 15.7.2013 to be incorporated in the main writ petition.

2. The common case of these petitioners is that the petitioner no. 1 was appointed as Assistant Teacher having special knowledge in Santhali pursuant to the advertisement dated 8.8.1988 and other similar advertisements were issued in respect of petitioner nos. 2 to 4 by the respective managing committee of the Middle school. The petitioner no. 1 had joined on 30.8.1988 vide Annexure-2 to the writ petition. The District Superintendent of Education gave temporary approval of her services vide Annexure-4 dated 3.12.1998. The petitioner no. 2 was appointed in Primary School, Dun Mission by the managing committee after following due procedure on 11.5.1990 and was also subjected to approval of the District Superintendent of Education vide memo dated 11.5.1990. Annexure-5 series are temporary approval letters of petitioner nos. 3 and 4 respectively, who were appointed by the managing committee of St. Joseph's School, Gohajori on 22.11.1989 and in Primary school, Chutkapani Mission on 12.1.1992. Annexure-6 series is the approval granted in favour of petitioner nos. 3 and 4 by the District Superintendent of Education, Dumka dated 6.1.1990 and 12.3.1992. These petitioners thereafter continued to serve their respective schools in their respective places in which they were appointed. However, they were not having the Teacher's Training qualification. The Regional Deputy Director of Education, however, recommended the petitioner no. 1 for in house training at Teachers' Training College, Jasidih by order dated 30.3.2000 (Annexure-7). Petitioner no. 2 was also sent for in house teachers' training course by the approval of the Regional Deputy Director of Education, Dumka, through his letter dated 9.12.1999, Annexure-8. Petitioner nos. 3 and 4 were also sent for in house teachers' training at Primary Teachers' Training School, Ghormara vide order dated 2.8.1999 and 9.12.1999, Annexure-9 series issued by the R.D.D., Santhal Pargana. All these petitioners completed their teachers' training course successfully and their certificates are annexed as Annexure-10 series, which shows the effective date of completion of the training i.e. 3.5.2002. These petitioners were thereafter transposed in matric trained scale by the respective management of the minority school, in which they were working continuously. The D.S.E. thereafter prepared a preposition statement for approval by the Directorate of Primary Education in respect of these teachers, pursuant to which the State grants aid to the respective minority schools for payment of salary of such teachers whose preposition statement has been approved by the competent authority. However, the preposition statement of petitioner no. 1 was rejected by the impugned order contained at Annexure-12 dated 19.7.2005, however, no order was passed in respect of petitioner nos. 2 to 4. Their rejection as aforesaid

has been passed on 22.6.2012, which have been allowed to be challenged by way of an I.A. No. 925 of 2013

3. According to learned counsel, the petitioner no. 1 had occasion to come before Patna High Court earlier in C.W.J.C. No. 5813 of 1997 (P), which, however, was decided by judgment rendered by the learned single Judge of this Court on 11.4.2004 as the matter stood transferred to this Court after bifurcation of the parent State of Bihar. The said writ petition was preferred by the petitioner no. 1 as she was not being paid salary since April, 1994. Leaned single Judge of the Court" vide judgment dated 11.4.2007 took into account the fact that the Apex Court in a batch of Special Leave Petitions observed that in Santhal Pargana, a large number of schools came to be closed on account of non-availability of the trained teachers. It further observed that though under the norms, trained teachers are required, however, trained teachers being not available, untrained teachers can be engaged. The Apex Court even observed that age relaxation be also given. These observations were made to keep the stream of education flowing in the backward areas of Santhal Pargna. Learned single Judge thereafter proceeded to hold that since no trained teachers applied in minority school, they engaged untrained teachers to impart education to the students in the Santhal Pargana region. Even respondent no. 3 had approved the appointment though temporarily. Even when the appointment was approved no condition was imposed that the untrained teachers are required to acquire training within any specified period and on their failure their services may be terminated It was found that petitioner no. 1, who was the sole petitioner in that case was working since 1988. In such circumstances, the order impugned therein was found to be unsustainable. Therefore, the writ petition was accordingly, allowed and respondents were directed to pay the salary of the petitioner for the period she has performed the duty. It was also observed that in the event the petitioner continues in service, she will be paid her salary till such time she continues in service.

4. Learned counsel for the petitioner submits that during the pendency of the said writ application, however, the preposition statement of the petitioner no. 1 had been rejected by order dated 19.7.2005 though she had acquired the said teachers" training and had continuously been working since her initial appointment.

5. Learned counsel for the petitioner further submits that the sole ground for rejection of the preposition statement in respect of not only petitioner no. 1 but also the other three petitioners as contained in impugned orders of rejection are based upon reliance of a letter dated 15.11.1978 issued by the Special Secretary, Government of Jharkhand addressed to all District Superintendents of Education, District Education Officers and other authorities. He submits that the import of the said letter is that no recognition or approval of the appointment of untrained teachers would be given in any linguistic or religious minority school, who have been appointed after 1.1.1971 learned counsel for the petitioner, however,

submits that the respondent-Director, Primary Education has in a wholly unfair and arbitrary manner placed reliance upon a circular of 1978 to refuse the preposition statement in respect of these petitioners, though they have fulfilled the requirement of training pursuant to the orders passed by the Regional Deputy Director of Education, Santhal Pargana himself. It is further submitted that at his stage after the petitioners having worked for more than 17 to 20 years in each individual cases and the minority school also supporting their stand, the respondent-Director Primary Education was wholly unjustified in refusing approval to the preposition statement. Learned counsel for the petitioner has relied upon a judgment of the learned single Judge in the case of Sudarshan Sharma Vs. State of Jharkhand and Others, in support of his case where the same circular, which was made effective from 1.1.1971, was also raised before the learned single Judge in the said case. He submits that in such circumstances, which are similar to the present one, where the said petitioners had also remained in service in minority school from 1581, the stand of the respondents questioning the initial appointment was held to be impermissible in the fact that after almost 19 years of service, the matter could not be allowed to be re-opened.

6. Learned counsel for the petitioner, therefore, submits that the impugned order needs to be quashed. The respondents have deliberately overlooked the reasonings recorded in the judgment rendered by the learned single Judge of this Court in respect of petitioner no. 1 vide judgment dated 11.4.2007, which takes into account the circumstances in which untrained teachers were appointed in the Santhal Pargana in minority schools. They have also totally overlooked the observation made by the Apex Court recorded by the learned single Judge in the said judgment also. Their acts axe in fact bordering on being contemptuous.

7. Learned counsel for the respondent-State, on the other hand, has relied upon a letter dated 15.11.1978, which according to him places a proscription or bar on approval on any such appointment of untrained teachers in linguistic or religious minority school appointed after 1.1.1971. Learned counsel for the respondent-State, however, is not able to dispute the factual matrix of the case where the Regional Deputy Director of Education, Santhal Paragana had himself ordered for in house training in respect of each of these four petitioners vide Annexure-7, 8 and 9 series passed on 30.3.2000, 9.12.1999, 2.8.1999 and 9.12.1999. These petitioners while being in employment had undergone teachers training course in recognized Government teachers" training College where they were recommended for training and they have successfully completed the training w.e.f. 3.5.2002, the certificates being Annexure-10 series. The petitioners had continued in service since 1988-90-92 in each individual cases. The respondent, Director, Primary Education, has sought to rely upon the circular-letter dated 15.11.1978 to refuse approval to their preposition statement.

8. Learned counsels appearing on behalf of the minority schools, however, have supported the petitioners. They have not refuted the aforesaid facts relating to the initial appointment of the petitioners as also their in house training on

recommendation of the R.D.D. before the preposition statements were rejected by the Director, Primary Education Government Jharkhand.

9. I have heard learned counsel for the parties and gone through the relevant materials on record. The facts of the instant case, which have been narrated in some depth in the earlier part of the judgment and which are not disputed by the official respondents, show that these petitioners initially were appointed as untrained teachers in minority school in the year 1988-90-92 respectively pursuant to different advertisement issued by the minority school in question. The petitioner no. 1 had earlier approached this Court in C.W.J.C. No. 5813 of 1997 (P) being aggrieved by the stoppage of salary since 1994: While deciding the said writ petition learned single Judge of this Court vide judgment dated 11.4.2007 had specifically taken note of the observation of the Hon'ble Apex Court of the exigencies prevailing in the Santhal Pargana region where a large number of schools were being closed on account of non-availability of trained teachers. The learned single Judge also took into account the observation of the Apex Court that if trained teachers were not available, untrained teachers could be engaged by even granting age relaxation so that the stream of education keeps flowing in the backward areas of Santhal Pargana. In such circumstances, the respondents were directed to pay salary to petitioner no. 1 for the period she continues in service. Admittedly, the petitioner no. 1's services were never terminated even during the pendency of the said writ petition or till date even after the impugned order refusing preposition for payment of salary to the said petitioner.

10. It is also not in dispute that all these four petitioners have undergone in house training pursuant to the direction passed by the Regional Deputy Director of Education, as referred to hereinabove vide Annexure-7, 8 and 9 series passed on 30.3.2000, 9.12.1999, 2.8.1999. After they had undergone training successfully, which was made effective from 3.5.2002, the minority school placed them in the category of matric trained teachers and made recommendation for approval of the preposition statement, which was duly forwarded by the District Superintendent of Education to the Directorate of Primary Education. The said preposition statement in respect of all these petitioner have been rejected by the impugned order as contained Annexure-12 dated 19.7.2005 and Annexure-C series to the supplementary counter affidavit filed on behalf of the respondents dated 22.6.2012, which has been impugned subsequently by an I.A. by petitioners. The rejection obviously is based upon reliance upon the letter dated 15.11.1978, which prohibits approval of services of untrained teachers in linguistic or religious minority school appointed after 1.1.1971. The same circular was also under consideration in a case decided by the learned single Judge of this Court in W.P. (S) No. 4439 of 2000 reported in Sudarshan Sharma Vs. State of Jharkhand and Others, . The learned single Judge of this Court found that it was too late after 19 years in the said case to allow the respondents to reopen the matters when the petitioner had worked continuously for so long and the order had been passed without giving any opportunity to the petitioners.

11. The order of the Director Primary Education, in the wake of the aforesaid facts, which have been narrated herein-above that the petitioners have been allowed to undergo in house training by order of the R.D.D. himself while in service, cannot be said to sustainable in law as well as on facts. The reliance of the respondents upon a letter dated 15.11.1970 in a matter relating to the appointment of the untrained teachers in the Santhal Paragana division, in the circumstances which was also taken note of by the learned single Judge in CWJC No. 5813/1997 (P) in the case of petitioner No. 1, is, therefore., far fetched and not a rational ground to refuse the preposition statement of these four petitioners, who have been worked for quite long period since 1988, 1990 and 1992 respectively in the said schools. In these circumstances, therefore, the impugned order dated 19.7.2005 and the orders dated 22.6.2012 passed in respect of the petitioners" cannot be sustained in law and on facts and are accordingly, quashed. Consequently the respondent-the Director.

Primary Education shall take fresh decision in the matter in respect of approval of preposition statement of the petitioners as also for release of such salary of the petitioners in their respective pay scales from the due dates from which they are entitled within a period of 12 weeks from the date of receipt of a copy of this order.

This writ petition stands allowed in the aforesaid terms.